

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8682 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GURDINOMAL SON OF KHUBCHAND SADHWANI

Versus

STATE OF GUJARAT

Appearance:

MR PK HANDA for Petitioner

MR SP HASURKAR for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/08/1999

ORAL JUDGEMENT

1. The petitioner is a retired Superintending Engineer of the Public Works Department, Government of Gujarat, by this petition under Article 226 of the Constitution challenges the order of the Government Annexure-G and prays for quashing and setting aside of the same. Under this order the respondent State Government ordered a cut of Rs.100/- per month from the

pension of the petitioner for five years for alleged misconduct against him.

2. Facts of the case in brief are that the petitioner in 1976 was holding the post of Executive Engineer. He was served vide memorandum (chargesheet) dated 21.1.1976 for the alleged misconduct of the year 1969. On 15.5.1976 he replied to the chargesheet and thereafter nothing has been heard by the petitioner till 7.10.1983, on which date the respondent asked the petitioner to give copy of the reply which is submitted to the chargesheet. Accordingly, the petitioner under its letter dated 3.3.1984 sent the copy of the reply to the chargesheet to the respondent.

3. Under the order of the respondent dated 21.12.1983 the petitioner was ordered to be promoted to the post of Superintending Engineer. The petitioner was retired from the Government service on 30.9.1984, however, subject to the condition that the inquiry shall continue against him. W.e.f. 1.12.1984 he was ordered to be given provisional pension. Provisional gratuity was also sanctioned on 12.1.1989 that is about after four years of his retirement without interest.

4. The respondent No.1 under its order dated 10.10.1986 decided to conduct the inquiry against the petitioner in respect of the chargesheet which has been given in the year 1976 and accordingly the Inquiry Officer has been appointed. It is the defence of the petitioner that this inquiry was nothing but only mala fide act on the part of the respondent to deny the promotion. Charges levelled against the petitioner for repair of the road mentioned in the memorandum of chargesheet, were not under its control. In fact, that area was not within his jurisdiction.

5. On the first day of the inquiry that is 22.9.1987 the petitioner remained present before the Inquiry Officer, but Presenting Officer was not present. The Presenting Officer was directed to directly submit brief to the petitioner, but it has not been done. He complained for this to the Inquiry Officer vide its letter dated 3.11.1987 which has been followed by subsequent reminder dated 29.4.1988. The petitioner though received incomplete brief, he submitted an application asking for record on 9.5.1988 and 16.5.1988 so that he may submit reply to the brief received by him from the Presenting Officer. The petitioner submitted his reply to the brief on 20.6.1988. He was called to attend the inquiry on 31.8.1990. He attended the inquiry

on the said date and he was about to submit typed copy of reply to the brief, final report has been submitted by the Inquiry Officer vide letter dated 7.8.1991. Second findings were submitted by letter dated 27.1.1992. Final order as stated earlier of the Government to order a cut of Rs.100/- per month in his pension for five years was made on 29.8.1995 and hence this Special Civil Application before this court.

6. On the record of this Special Civil Application I do not find reply of the respondents. Learned counsel for the petitioner contended that this inquiry was nothing but only an act on the part of the respondents to deny the promotion to the petitioner.

7. It has next been contended that, in case it would have really been a case of serious misconduct as alleged committed by the petitioner, then respondents should not have taken 7 years to serve the chargesheet. The chargesheet has been served upon the petitioner only to see that he may not get promotion. It is motivated action by the respondent at the instance of the persons who wanted to see supersession of the petitioner in the promotion. Then it is submitted that this inquiry was never taken to be serious by the respondents also which clearly born-out from the fact that the petitioner was given promotion to the post of Superintending Engineer though at the fag end of his carrier i.e. vide order dated 21.12.1983. He was retired on 30.11.1984 and till retirement nothing has been done in this departmental inquiry.

8. Learned counsel for the petitioner further contended that after his retirement the respondents decided to proceed with the inquiry and the Inquiry Officer has been appointed vide order dated 10.10.1986 that is about one year and 11 months of his retirement. The Inquiry Officer has taken almost 5 years to complete the inquiry. The disciplinary authority (State) has taken about four years to pass the impugned order. This delay in serving the chargesheet, appointment of the Inquiry Officer, submission of the report by the Inquiry Officer and passing of the final order by the respondents is itself sufficient for exonerating the petitioner from the charges.

9. Lastly, it is contended that leaving apart that the petitioner was not concern for this repair work of the roads mentioned in the chargesheet, otherwise also on the face of it charges are only of carelessness in discharging duties for which after so many years

punishment should not have been given. Carrying this contention further it is urged that though it is given out that financial loss have been suffered by the Government, but what loss has been suffered it has not been stated and proved.

10. Learned counsel for the respondents on the other hand supports the order passed by the State Government.

11. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

12. Charge No.1 is proved against the petitioner as per the inquiry report, but so far as the charge No.2 is concerned it was held to be partly proved and the charge No.3 was held to be not proved. Though this court has very limited powers of judicial review in such matter, but for my satisfaction I have gone through the inquiry report and therefrom I find that it is not the case where any of mala fide / motive or extraneous consideration can be imputed against the petitioner. It is not the case where it is found as a fact that for its own benefits the petitioner did all these things. After going through that report it appears to be at the most that the petitioner may be careless or negligent in discharging of his duties, but unless this carelessness and negligence result in some financial loss to the Government at such belated stage and more so after retirement of the officer and keeping in view where no oblique motive of the petitioner were found in the matter, it is not the case where he should have been penalised. I find sufficient merits in the contention of the learned counsel for the petitioner that this delay in initiating the inquiry, appointment of the inquiry officer, period taken by the Inquiry Officer to complete the inquiry and in passing of final order by the Government, this order deserves to be quashed and set aside. Misconduct alleged is of the year 1969 and the respondents have taken almost 6 years to give the chargesheet to the petitioner. Then they slept in the matter and till the petitioner retired i.e. 30.11.1984 this inquiry has not been proceeded further. Till the date of the retirement of the petitioner this inquiry remained dormant. After two years of the retirement of the petitioner from service the Inquiry Officer was appointed. Respondents have not given out any explanation for this delay in giving the chargesheet and appointment of the Inquiry Officer. The Inquiry Officer has been appointed after more than 10 years of giving the chargesheet and two years after retirement of the petitioner. The Inquiry Officer has taken about five years in completing the inquiry. This delay has also not

been explained. It is not the case of the respondents that the petitioner in any manner was responsible for this delay in inquiry.

13. Be that as it may, inquiry report has been given on 7.8.1991. Last inquiry report has given on 27.1.1992, but the respondents took more 3 years and 7 months to pass final order. This delay at all these stages coupled with the nature of the charges, findings given by the Inquiry Officer and the fact that it is a case of some carelessness or negligence in discharge of the duties by the petitioner at the most, but it has not resulted to any financial loss to the respondents, this order of cut of Rs.100/- per month in the pension of the petitioner for five years cannot be allowed to stand. The petitioner because of this chargesheet has suffered more than what otherwise he would not have been. He was not given promotion for long period. His retiral benefits have been withheld for long period. In case this inquiry would not have been there the petitioner would have received his pension and all other retiral benefits immediately and would not have suffered for this monetary loss. Monetary loss which is suffered is more than that what the penalty has been given. Apart from this it appears to be a case where when the inquiry had been started against the petitioner, it has to be culminated in some penalty, this impugned order appears to have been passed.

14. In the result, this Special Civil Application succeeds and the same is allowed. Order dated 10.10.1986 is quashed and set aside. Rule is made absolute in the aforesaid terms. No order as to costs.

(S.K.Keshote,J.)
(pathan)